



WASHOE COUNTY

Integrity Communication Service

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 Finance _____
 DA _____
 Risk Mgt _____
 HR _____
 Other _____

STAFF REPORT

BOARD MEETING DATE: *December 13, 2016*

DATE: Tuesday, December 06, 2016

TO: Board of County Commissioners

FROM: Craig Betts, CIO, Technology Services
775-328-2355, cbetts@washoecounty.us

THROUGH: John Slaughter, County Manager

SUBJECT: Second reading and possible adoption of an ordinance amending chapter 5 of the Washoe County Code, Section 5.456, to authorize the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto. (All Commission Districts.)

SUMMARY

Second reading and possible adoption of an ordinance amending chapter 5 of the Washoe County Code, Section 5.456, to authorize the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto (All Commission Districts.)

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities

AGENDA ITEM # 14

PREVIOUS ACTION

On October 18, 2016 the BCC pursuant to Washoe County Code 2.030, approved a request to amend the Washoe County Code Chapter 5 to allow the County the explicit power, by way of the Chief Information Officer and with approval of the Board of County Commissioners, to enter into agreements to share radio systems with governmental and private entities, and allow for the shared use, operation, maintenance, upgrade and replacement of such radio systems and directed the Clerk to submit the request to the District Attorney for preparation of a proposed ordinance pursuant to Washoe County Code 2.040.

On November 29, 2016 the Board found that the 800 MHz System and any future similar system of radio communication which is owned or operated by Washoe County is a matter of local concern for the effective operation of local government, and introduced and conducted a first reading of the ordinance.

BACKGROUND

Washoe County, Nevada Department of Transportation (“NDOT”) and Nevada Energy (“NVE”) are each owners of various parts of the 800 MHZ emergency radio system in Northern Nevada and are looking to upgrade that system.

As part of the upgrade to the new system, staff are negotiating a series of agreements which will create a governing board responsible for oversight of the system as a whole, a maintenance and operation agreement, an agreement concerning technical requirements of the system, a request for proposal for a manufacturer of the new equipment, and other similar agreements designed to formalize the relationship of the parties and to maintain consistency in the equipment purchased and used for the system.

A potential problem exists, however, in that there is no specific statutory authority allowing the County to own and operate a radio system or to enter an agreement to use each other’s systems with a private entity such as NVE. Despite the lack of authority, the County has owned and operated its portion of the system for many years and has been a party to the WCRCIS Interlocal along with other users of that system, including NDOT, dating to at least 1999. There is no similar agreement between the County and NVE, and no statutory authority similar to Chapter 277 to allow the County and NVE to enter into an interlocal agreement. It is this lack of authority to enter into agreements with a private entity which is the genesis of this ordinance.

Until recently, Nevada was a “Dillon’s Rule” state which meant that the County could only perform those activities which the State, its creator, allowed it to, with very few exceptions. In the last legislative session that rule was modified at NRS 244.137 through 244.146 and 244.195.

Now, the legislature has granted the County those powers “necessary and proper to address matters of local concern” so that the board may adopt county ordinances and implement and carry out county programs and functions for the effective operation of county government, NRS 244.137(6)(a), and Dillon’s rule has been modified “so that if there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern, it must be presumed that the board has the power

unless the presumption is rebutted by evidence of a contrary intent by the Legislature”, which presumption may be rebutted by evidence of a contrary legislative intent. 244.137(6)(b). In interpreting the sections described above, they must not be interpreted to modify Dillon’s Rule with regard to powers other than those necessary or proper to address matters of local concern for the effective operation of county government. NRS 244.137(7)(b). These same expressions of legislative intent are then described as powers at NRS 244.146.

A “matter of local concern” is one that “[p]rimarily affects or impacts areas located in the county . . . and does not have a significant effect or impact on areas located in other counties”, is not within another public entity’s exclusive jurisdiction, and does not concern a state interest requiring uniformity of regulation, regulation of business activities which are subject to substantial state or federal regulation, or any other state or federal regulation which preempts local regulation. NRS 244.143(1). A matter of local concern includes public, health, safety and welfare, and any public property owned, leased, operated, managed or controlled by county government. NRS 244.143(2). These examples are illustrative, not exhaustive. NRS 244.143(3).

NRS 244.146(3) also notes that regardless of these newly granted powers, the County cannot impose duties on another governmental entity unless those duties are agreed to by contract.

Finally, NRS 244.195 essentially restates that commissioners have the power and jurisdiction to do and perform all acts “as may be lawful and necessary to the full discharge of the powers and jurisdiction conferred on the board.”

At first glance the operation of a statewide emergency radio system would seem not to be a matter of local concern because it is statewide and could require statewide uniformity of regulation. However, as noted, the system in Northern Nevada is currently, and has been for several decades, owned by the County, NDOT and Nevada Energy, and the State has not acted to make the system uniform across the State, or to regulate the system in any significant manner. The three entities have also been using each other’s systems to some extent by agreement for many years. While NDOT and the County are parties to the WCRCS Interlocal and NDOT and NVE have an agreement as well, there is no similar agreement between the County and NVE. Moreover, the system in Southern Nevada is owned and operated by other similar entities, which tends to show the radio systems have not been considered matters of statewide concern which require uniformity.

Thus, at least with regard to the system as it operates in Washoe County, the emergency radio system is a matter of local concern. The fact that the purpose of the system is designed to assist in maintaining public, health, safety and welfare, and consists of public property owned, leased, operated, managed or controlled by the County confirms that it is a matter of local concern. It follows that the County can enact ordinances concerning its use, governance, operation, maintenance, and upgrade to newer systems and which allow County staff to enter into agreements with public and private entities to do so, provided the County does not impose duties on other governmental entities outside of a contract allowing it to do so.

To the latter point, while the system itself stretches across Northern Nevada, those portions of the system outside of Washoe County are owned by NDOT and NVE, who will be parties to the agreements which allow for sharing of the systems and costs. The local governmental entities who may be asked to contribute to the costs of the new system are all parties to the WCRCS Interlocal and the County will therefore not be imposing duties on other governmental entities outside of a contract by virtue of this proposed ordinance.

For these reasons, it is the opinion of staff that the Board of Commissioners, having found that the 800 MHz System and any future similar system of radio communication which is owned or operated by Washoe County is a matter of local concern for the effective operation of local government, should adopt the attached ordinance which authorizes the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law.

As a peripheral matter, the Chief Information Management Officer has been re-titled as the "Chief Information Officer" and the ordinance also recognizes and makes that change of title.

FISCAL IMPACT

The proposed code changes are not expected to increase costs.

RECOMMENDATION

Staff recommends that the Board adopt the proposed ordinance amending chapter 5 of the Washoe County Code, Section 5.456, to authorize the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto. (All Commission Districts.)

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

"I move to conduct a second reading and adopt the proposed ordinance amending chapter 5 of the Washoe County Code, Section 5.456, to authorize the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required

to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto. (All Commission Districts.)

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: AN ORDINANCE authorizing the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE authorizing the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law; changing the title of Chief Information Management Officer to Chief Information Officer; and providing for other matters properly relating thereto.

WHEREAS Washoe County owns and operates an 800 MHz system of radio communication commonly known as the Washoe County Regional Communications System in Washoe County ("WCRCS") which is used for emergency and public safety communications; and,

WHEREAS, the State of Nevada Department of Transportation ("NDOT") owns and operates a similar system of radio communication in and outside of Washoe County which is used for emergency and public safety communications; and,

WHEREAS, private entities such as Nevada Energy own and operate radio systems in and outside of Washoe County which are used for emergency and public safety communications; and,

WHEREAS, Washoe County and NDOT share the use, governance, operation, maintenance, and upgrade of their systems pursuant to the WCRCS Interlocal Agreement, initially established in 1999, and amended in 2002 and 2014, which has also been signed by other local governments and public agencies that provide emergency services in Washoe County and who use the WCRCS; and,

WHEREAS, NDOT and Nevada Energy share the use, governance, operation, maintenance, and upgrade of their systems pursuant to a written agreement; and,

WHEREAS, Washoe County and Nevada Energy have shared the use, governance, operation, and maintenance of their systems for many years, but have no written agreement to do so; and,

WHEREAS, it is in the interests of all Washoe County citizens that Washoe County, NDOT, Nevada Energy, and any other future public or private owners or operators of similar radio systems in Washoe County and Nevada to continue the shared the use, governance, operation, maintenance, and upgrade of the aforementioned radio systems to assure local public and private emergency communication services will continue into the future; and,

WHEREAS, in furtherance of the goal of assuring the continued provision of public and private emergency services and communication by public and private emergency services and safety officials, Washoe County, NDOT, and Nevada Energy desire to enter into agreements allowing for the shared the use, governance, operation, maintenance, and upgrade of their systems from the current 800 MHz system to a new radio communication system known as the P25 System and to future radio communications systems as newer technologies emerge; and,

WHEREAS, the Nevada Revised Statutes at Chapter 277 allow any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and,

WHEREAS, the Nevada Revised Statutes do not explicitly authorize or preclude county ownership of radio systems, or explicitly authorize or preclude a county from entering into an agreement with private entities for the shared the use, governance, operation, maintenance, and upgrade of any such systems; and,

WHEREAS, Nevada Revised Statutes 244.137 through 244.146 grant to boards of county commissioners all powers necessary or proper to address matters of local concern for the effective operation of county government, whether or not the powers are expressly granted to the board; and,

WHEREAS, based on the foregoing, the Board of County Commissioners hereby finds pursuant to NRS 244.143(1) that entering into agreements with other entities, including private entities, for the shared the use, governance, operation, maintenance, and upgrade of Washoe County's and such other entities' radio communication systems and to upgrade to future radio communications systems, (a) will primarily affect or impact areas located in or persons who reside, work, visit or are otherwise present in Washoe County, (b) is not within the exclusive jurisdiction of another governmental entity, (c) does not concern a state interest requiring statewide uniformity of regulation, regulation of business activities subject to substantial state or federal regulation or interests committed to federal or state regulation that preempts local regulation; and,

WHEREAS, based on the foregoing, the Board of County Commissioners further finds pursuant to NRS 244.243(2) that entering into agreements with other entities, including private entities, for the shared use, governance, operation, maintenance, and upgrade of Washoe County's and such other entities' radio communication systems is integral to the continued health, safety and welfare of the citizens of Washoe County; and,

WHEREAS, based on the foregoing, the Board of County Commissioners further finds that entering into agreements with other entities, including private entities, for the shared use, governance, operation, maintenance, and upgrade of Washoe County's and such other entities' radio communication systems is a matter of local concern as defined in the Nevada Revised Statutes at NRS 244.137 through 244.146; and,

WHEREAS, based on these findings, the Board of County Commissioners desires to authorize the Chief Information Officer to negotiate and enter into, with Board of County Commissioner approval where required by law or policy, agreements with other entities, both public and private, as may be required to assure the continued present and future operation of Washoe County's radio communications systems, including, without limitation, agreements for the shared use, governance, operation, maintenance, and upgrade of Washoe County's and such other

entities' radio communication systems and to administer any such agreements; and,

WHEREAS, on October 18, 2016, the Board of County Commissioners directed staff to draft an ordinance and to take such other and further actions as are necessary to authorize the Chief Information Officer to negotiate and enter agreements with other entities, including private entities, as may be required to assure the continued present and future operation of Washoe County's radio communications systems, which agreements may include the shared governance, use, operation, maintenance, or current or future upgrade of Washoe County systems and other similar public and private systems and, after approval by the Washoe County Board of Commissioners where required by law, to administer the agreement to assure compliance with the same; and,

WHEREAS the title of "Chief Information Management Officer" has changed to "Chief Information Officer" and an amendment to the relevant Washoe County Code provision is necessary to reflect this change in title,

THE BOARD OF COMMISSIONERS OF WASHOE COUNTY, STATE OF NEVADA, DO ORDAIN:

SECTION 1. Section 5.456 of the Washoe County Code is hereby amended to read as follows:

5.456 Powers and duties of chief information officer; staff

1. The chief shall direct and supervise the planning, coordination, implementation and evaluation the County's information management and telecommunications systems and services and shall oversee the provision of technology services to the County. The chief shall implement programs for development, enterprise, and any other programs he deems necessary to carry out the functions of the department.

2. As part of the duties described in subsection 1, the chief shall negotiate, execute, and administer agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s). Such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of Washoe County's and other entities' radio communication systems, unless otherwise prohibited by law, and shall be presented to the Washoe County Board of Commissioners for final approval when required by law or policy.

3. The chief shall appoint into the unclassified service of the County a director of programs, who shall have such powers and duties as are conferred upon him by the chief in administering the operations of the department.

4. The chief shall appoint, pursuant to any applicable provisions of law regulating county personnel, such technical, clerical and operating staff as the execution of the duties of the chief and operation of the department may require.

['4, Ord. No. 1316 eff. 10-20-06

SECTION 2. General Terms.

A. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers and appointed agents not inconsistent with the provisions of this Ordinance are ratified and approved.

B. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed, as of the effective date of the consolidation. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.

C. Except as specifically provided herein, this ordinance shall be in effect from and after its publication as hereinafter provided, and after this ordinance is signed by the Chairman of the Board and attested and sealed by the County Clerk, this ordinance shall be published by title only, together with the names of the Commissioners voting for or against and with a statement that typewritten copies of said ordinance are available for inspection by all interested parties at the office of the County Clerk, such publication to be made in the Reno Gazette Journal, a newspaper published and having general circulation in the County, at least once a week for a period of two weeks by two insertions as required by NRS 244.100 and any other enabling laws.

D. A copy of this ordinance shall be recorded in the office of the county recorder for Washoe County.

E. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it

shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

[Business Impact Note: The Board of County Commissioners hereby finds that this ordinance does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business.]

Proposed on the ____ day of _____, 2016.

Proposed by Commissioner _____.

Passed on the ____ day of _____, 2016.

Vote:

Ayes: _____

Nays: _____

Absent: _____

Kitty K. Jung, Chair
Washoe County Commission

ATTEST:

County Clerk

This ordinance shall be in force and effect from and after the ____ day of _____, 2016 and as specifically provided in Section 4, above.